BILL NO. G-95-12-08 (AS AMENDED)

GENERAL ORDINANCE NO. G-

AN ORDINANCE OF THE COMMON COUNCIL OF THE CITY OF FORT WAYNE, INDIANA AMENDING CHAPTER 95 OF THE MUNICIPAL CODE OF THE CITY OF FORT WAYNE.

WHEREAS, numerous studies have found that tobacco smoke is a major contributor to indoor pollution, and that breathing secondhand smoke is a cause of disease, including lung cancer in non-smokers; and

WHEREAS, people at special risk to secondhand smoke are the elderly, children under the age of 18 years, individuals with cardiovascular disease, and individuals with impaired respiratory function, including asthmatics and those with obstructed airway disease; and

WHEREAS, health hazards induced by breathing secondhand smoke include lung cancer, heart disease, respiratory infection, decreased respiratory function, bronchoconstriction, and bronchospasm; and

WHEREAS, the Fort Wayne Common Council finds and declares that the purposes of this ordinance are: 1). to protect the public health and welfare by prohibiting smoking in public places and places of employment; and 2). to protect those at special risk to secondhand smoke; and 3). to guarantee the right of nonsmokers to breathe smokefree air, and to recognize that the need to breathe smokefree air shall have priority over the desire to smoke.

NOW, THEREFORE, BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF FORT WAYNE, INDIANA:

SECTION 1. That current Secs. 94.01 and 113.52 of the Fort Wayne Municipal Code are hereby repealed.

SECTION 2. That Chapter 95 of the Municipal Code of the City of Fort Wayne, Indiana is hereby amended by adding the following language:

"REGULATION OF SMOKING IN WORKPLACES AND ENCLOSED PUBLIC PLACES.

Sec. 95.58 **Definitions.** As used in this chapter, the following terms have the meanings indicated unless the content clearly requires otherwise:

"Business" means any sole proprietorship, partnership, joint venture, corporation, or other business entity formed for profit-making purposes that is accessible to children under the age of 18 years, including retail establishments where goods or services are sold as well as professional corporations and other entities where legal, medical, dental, engineering, architectural, or other professional services are delivered.

"Employee" means any person who is employed by any employer in the consideration for direct or indirect monetary wages or profit, and any person who volunteers his or her services for a non-profit entity.

"Employer" means any person, partnership, corporation, including a municipal corporation, or non-profit entity who employs the services of one or more individual persons.

"Enclosed area" means all space between a floor and ceiling which is enclosed on all sides by solid walls or windows (exclusive of door or passageways) which extend from the floor to the ceiling, including all space therein screened by partitions which do not extend to the ceiling or are not solid, "office landscaping," or similar structures.

"Place of employment" means any enclosed area under the control of a public or private employer where employees are reasonably expected to frequent during the course of employment, including but not limited to work areas, employee lounges and restrooms, conference and classrooms, employee cafeterias, and hallways unless expressly exempted from the terms of this ordinance by Section 95-62 below. A private residence is not a "place of employment" unless it is used as a child care or health care facility.

"Public Place" means any enclosed indoor area or vehicle used by and open to, the public and accessible to children under the age of 18 years regardless of whether the building or vehicle is owned in whole or in part by a private person or entities or by the City of Fort Wayne or other public entity, and regardless of whether a fee is charged for admission to the place. It includes, but is not limited to: elevators, public conveyances, museums, concert halls, theaters, hallways, auditoriums, exhibition halls, indoor sports arenas, bowling centers, hospitals, nursing homes, medical, dental, or health care facilities, enclosed shopping centers, retail stores, retail service establishments, financial institutions, educational facilities, public meetings or hearings, public transportation facilities, ticket areas, public restrooms, libraries, restaurants, waiting areas, lobbies and reception areas.

"Restaurant" means any coffee shop, convenience store prepared food stand, cafeteria, sandwich stand, private or public school cafeteria, and any other eating establishment which gives or offers for sale food to the public, guests or employees, as well as kitchens in which food is prepared on the premises for serving elsewhere, including catering facilities.

"Retail Tobacco Store" means a retail store utilized primarily for the sale of tobacco products and accessories and in which the sale of other products is merely incidental.

"Smoke or smoking" means inhaling, exhaling, burning, or carrying any lighted pipe, cigar, cigarette, weed, or any other lighted smoking material.

"Sports Arena" means sports pavilions, gymnasiums, health spas, boxing arenas, swimming pools, roller and ice rinks, bowling alleys, and other similar places that is accessible to children under the age of 18 years where members of the general public assemble either to engage in physical exercise, participate in athletic competition, or witness sports events.

"Tavern" means an establishment which serves alcoholic beverages and:

1). has greater gross sales in alcoholic beverages than food each year; or

2). owns an alcoholic beverage permit and grosses less than one hundred thousand dollars ($100,000) from the sale of food each year.

Sec. 95-59 Application of Article to City-Owned Facilities.

All enclosed facilities owned by the City of Fort Wayne shall be subject to the provisions of this article.

Sec. 95-60 Prohibition of Smoking in Public Places and the Fort Wayne Children's Zoo.

A). Smoking shall be prohibited in all enclosed public places accessible to children under the age of 18 years within the City of Fort Wayne, Indiana, including but not limited to the following places:

1). Elevators
2). Buses, taxicabs, and other means of public transit.
3). Restrooms.
4). Service lines.
5). Retail stores.
6). All areas available to the general public without express invitation or permission in all businesses and non-profit entities.
7). Public areas of aquariums, galleries, libraries, and museums when open to the public.
8). Any facility which is primarily used for exhibiting any motion picture, stage, drama, lecture, musical recital, or other similar performance, except when smoking is part of a stage production.
9). Sports arenas and convention halls.
10). Every room, chamber, place of meeting or public assembly, including school buildings, under the control of any board, council, commission, committee, including joint committees, or agencies of the City or any political subdivision of the State during such time as a public meeting is in progress, to the extent such place is subject to the jurisdiction of the City.
11). Waiting rooms, hallways, wards and semiprivate rooms of health facilities, including but not limited to hospitals, clinics, physical therapy facilities, doctors' offices, and dentists' offices.
12). Lobbies, hallways and other common areas in apartment buildings, condominiums, retirement facilities, nursing homes, and other multiple-unit residential facilities.
13). Lobbies, hallways, and other common areas in multiple-unit commercial facilities.
14). Polling places.

B). Smoking shall be prohibited at all times in all areas of the Fort Wayne Children's Zoo.

Sec. 95-61 Regulation of Smoking in Places of Employment.

A). It shall be the responsibility of employers to provide a smokefree workplace for all employees.

B). Within 90 days of the effective date of this ordinance, each employer having an enclosed place of employment located within the city shall adopt, implement, make known, and maintain a written smoking policy which shall contain the following requirements:

Smoking shall be prohibited in all enclosed facilities within a place of employment subject to Section E, below. This includes common work areas, auditoriums, classrooms, conference and meeting rooms, private offices, elevators, hallways, medical facilities, cafeterias, employee lounges, stairs, restrooms, vehicles, and all other enclosed facilities.

C). The smoking policy shall be communicated to all employees within three (3) weeks of its adoption.

D). All employers shall supply a written copy of the smoking policy upon request to any existing or prospective employee.

E). An employer may establish a designated smoking area providing that such area:

1). Shall be completely enclosed and separated from the remainder of the building by solid walls and ceiling and a closable door. The walls shall tightly join the floor and ceiling,
2). Is not a work area, and
3). Is not an area non-smoking employees would ordinarily or necessarily occupy in the course of a day.

Sec. 95-62 Where Smoking Not Regulated.

A). Not withstanding any other provision of this ordinance to the contrary, the following areas shall not be subject to the smoking restrictions of this ordinance:

1). Private residences, except when used as a child care or health care facilities.
2). Retail tobacco shops.
3). Restaurant, hotel and motel conference rooms or meeting rooms, and public and private assembly rooms while these places are being used for private functions.
4). All hotel and motel guest rooms or suites.
5). Bars and taverns.
6). The bar area of a restaurant which shall include an area up to ten feet from the bar. If, however, the room in which the bar is located is separated from the other rooms in the restaurant by floor to ceiling walls then the entire room shall not be subject to the terms of this ordinance notwithstanding the fact that open doorways lead from the bar room to the remainder of the restaurant.

B). Notwithstanding any other provision of this section, any owner, operator, manager, or other person who controls any establishment described in this section may declare a portion of, or the entire establishment, as a non-smoking establishment.

C). To the extent that any sections of this ordinance conflict with any state or federal statute or regulation or with any regulation of the Fort Wayne Fire Department, this section shall not apply.

Sec. 95-63 Posting of Signs.

A). "No Smoking" signs or the international "No Smoking" symbol (consisting of a pictorial representation of a burning cigarette enclosed in a red circle with a red bar across it) shall be clearly, sufficiently, and conspicuously posted in every building or other place where smoking is regulated by this ordinance, by the owner, operator, manager, or other person having control of such building or other place.

B). Every workplace shall have posted at every entrance a conspicuous sign clearly stating that smoking is prohibited subject to the exception set forth in paragraph (c) below.

C). With the exception of private residences, the owner of any business where any portion of the building is specifically not regulated under (Sec. 95-62 of this ordinance) shall post a sign informing the public that smoking is permitted in the entire establishment, or in a portion of the establishment. The sign shall further state that second hand smoke has been determined by the U.S.E.P.A. to be a class A carcinogen which may cause lung cancer, and that second hand smoke has been determined to cause respiratory diseases in children and adults.

Sec. 95-64 Enforcement

A). Enforcement of this ordinance shall be implemented by the Fort Wayne-Allen County Board of Health, the Fort Wayne Fire Department, the Fort Wayne Police Department and all other City and County governmental agencies responsible for building inspections, which board and/or departments shall certify in writing that any establishment being inspected is complying with the terms of the ordinance.

B). Any citizen who desires to register a complaint under this ordinance may initiate enforcement with the Fort Wayne-Allen County Board of Health, the Fort Wayne Fire Department, or the Fort Wayne Police Department.

C). The Fort Wayne Fire Department or the Fort Wayne-Allen County Board of Health shall require, while an establishment is undergoing otherwise mandated inspections, a written "self-certification" from the owner, manager, operator, or other person having control of

such establishment that it has complied with all requirements of this ordinance.

D). Any owner, manager, operator, or employee of any establishment regulated by this ordinance shall inform persons violating this ordinance of the appropriate provisions thereof.

Sec. 95-64 Violations and Penalties

A). It shall be unlawful for any person who owns, manages, operates, or otherwise controls the use of any premises subject to regulation under this article to fail to comply with any of its provisions.

B). Any person who violates any provision of this ordinance shall be guilty of an infraction, punishable by:

1). A fine not to exceed one hundred dollars ($100) for a first violation.

2). A fine not to exceed two hundred dollars ($200) for a second violation of this ordinance within one (1) year.

3). A fine not to exceed five hundred dollars ($500) for each additional violation of this ordinance within one (1) year.

Sec. 95-65 Nonretaliation

No person or employer shall discharge, refuse to hire, or in any manner retaliate against any employee or applicant for employment because such employee or applicant exercises any right to a smokefree environment afforded by this ordinance.

Sec. 95-66 Public Education

The Fort Wayne-Allen County Board of Health shall engage in a continuing program to explain and clarify the purposes and requirements of this ordinance to citizens affected by it, and to guide owners, operators, and managers in their compliance with it. Such program may include publication of a brochure for affected businesses and individuals explaining the provisions of this ordinance.

Sec. 95-67 Other Applicable Laws

This ordinance shall not be interpreted or construed to permit smoking where it is otherwise restricted by other applicable laws.

Sec. 95-68 Severability

If any provision, clause, sentence, or paragraph or this ordinance or the application thereof to any person or circumstances shall be held invalid, such invalidity shall not affect the other provisions of this article which can be given effect without the invalid provision or application, and to this end the provisions of this article are declared to be severable.

SECTION 3. That this Ordinance shall be in full force and effect on July 1, 1996, from and after its passage and any and all necessary approval by the Mayor, and its legal publication.

Council Member

APPROVED AS TO FORM AND LEGALITY

Stanley A. Levine, Council Attorney

SECTION 3. That this Ordinance shall be in full force and effect from the date of its legal publication after passage, and any and all necessary approval by the Mayor, and shall continue to be in full force and effect for a period of one year upon which date the ordinance shall expire unless the Common Council of the City of Fort Wayne takes all necessary legal action to renew its effect for whatever duration it deems appropriate.

Council Member

APPROVED AS TO FORM AND LEGALITY

Stanley A. Levine, Council Attorney

BILL NO. G-95-12-08

Date 12-12-95

REPORT OF THE COMMITTEE ON
REGULATIONS
CLETUS R. EDMONDS - REBECCA J. RAVINE - CO-CHAIR
ALL COUNCIL MEMBERS

WE, YOUR COMMITTEE ON REGULATIONS TO WHOM WAS

REFERRED AN (ORDINANCE) (~~RESOLUTION~~) OF THE COMMON COUNCIL OF THE CITY OF FORT WAYNE, INDIANA AMENDING CHAPTER 95 OF THE MUNICIPAL CODE OF THE CITY OF FORT WAYNE
(SMOKING ORDINANCE)

HAVE HAD SAID (ORDINANCE) (~~RESOLUTION~~) UNDER CONSIDERATION AND BEG LEAVE TO REPORT BACK TO THE COMMON COUNCIL THAT SAID (ORDINANCE) (~~RESOLUTION~~)

DO PASS	DO NOT PASS	ABSTAIN	NO REC

DATED:

Sandra E. Kennedy
City Clerk

Read the first time in full and on motion by Ramie,
nd duly adopted, read the second time by title and referred to the
ommittee on Regulations (and the City Plan Commission
or recommendation) and Public Hearing to be held after due legal notice, at
he Common Council Council Conference Room 128, City-County Building, Fort
ayne,, Indiana, on _____, the _____ day of
_____, 19____, at _____ o'clock
_____M.,E.S.T.

DATED: 12-5-95

Sandra E. Kennedy
SANDRA E. KENNEDY, CITY CLERK

Read the third time in full and on motion by _____,
nd duly adopted, placed on its passage. PASSED LOST
y the following vote:

	AYES	NAYS	ABSTAINED	ABSENT
OTAL VOTES				
RADBURY				
DMONDS				
iaQUINTA				
ENRY				
ONG				
UNSEY				
AVINE				
CHMIDT				
ALARICO				

DATED: _____
SANDRA E. KENNEDY, CITY CLERK

Passed and adopted by the Common Council of the City of Fort Wayne,
ndiana, as (ANNEXATION) (APPROPRIATION) (GENERAL)
SPECIAL) (ZONING) ORDINANCE RESOLUTION NO. _____
n the _____ day of _____, 19____

ATTEST: (SEAL)

ANDRA E. KENNEDY, CITY CLERK
PRESIDING OFFICER

Presented by me to the Mayor of the City of Fort Wayne, Indiana, on
he _____ day of _____, 19____,
t the hour of _____ o'clock _____,M., E.S.T.

SANDRA E. KENNEDY, CITY CLERK

Approved and signed by me this _____ day of _____,
9____, at the hour of _____ o'clock _____M., E.S.T.

PAUL HELMKE, MAYOR

BILL NO. G-95-12-08

GENERAL ORDINANCE NO. G-

AN ORDINANCE OF THE COMMON COUNCIL OF THE CITY OF FORT WAYNE, INDIANA AMENDING CHAPTER 95 OF THE MUNICIPAL CODE OF THE CITY OF FORT WAYNE.

WHEREAS, numerous studies have found that tobacco smoke is a major contributor to indoor pollution, and that breathing secondhand smoke is a cause of disease, including lung cancer in non-smokers; and

WHEREAS, people at special risk to secondhand smoke are the elderly, individuals with cardiovascular disease, and individuals with impaired respiratory function, including asthmatics and those with obstructed airway disease; and

WHEREAS, health hazards induced by breathing secondhand smoke include lung cancer, heart disease, respiratory infection, decreased respiratory function, bronchoconstriction, and bronchospasm; and

WHEREAS, the Fort Wayne Common Council finds and declares that the purposes of this ordinance are: 1). to protect the public health and welfare by prohibiting smoking in public places and places of employment; and 2). to guarantee the right of nonsmokers to breathe smokefree air, and to recognize that the need to breathe smokefree air shall have priority over the desire to smoke.

NOW, THEREFORE, BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF FORT WAYNE, INDIANA:

SECTION 1. That current Secs. 94.01 and 113.52 of the Fort Wayne Municipal Code are hereby repealed.

SECTION 2. That Chapter 95 of the Municipal Code of the City of Fort Wayne, Indiana is hereby amended by adding the following language:

"REGULATION OF SMOKING IN WORKPLACES AND ENCLOSED PUBLIC PLACES.

Sec. 95.58 **Definitions.** As used in this chapter, the following terms have the meanings indicated unless the content clearly requires otherwise:

"Business" means any sole proprietorship, partnership, joint venture, corporation, or other business entity formed for profit-making purposes, including retail establishments where goods or services are sold as well as professional corporations and other entities where legal, medical, dental, engineering, architectural, or other professional services are delivered.

"Employee" means any person who is employed by any employer in the consideration for direct or indirect monetary wages or profit, and any person who volunteers his or her services for a non-profit entity.

"Employer" means any person, partnership, corporation, including a municipal corporation, or non-profit entity who employs the services of one

or more individual persons.

"Enclosed area" means all space between a floor and ceiling which is enclosed on all sides by solid walls or windows (exclusive of door or passageways) which extend from the floor to the ceiling, including all space therein screened by partitions which do not extend to the ceiling or are not solid, "office landscaping," or similar structures.

"Place of employment" means any enclosed area under the control of a public or private employer which employees normally frequent during the course of employment, including but not limited to work areas, employee lounges and restrooms, conference and classrooms, employee cafeterias, and hallways. A private residence is not a "place of employment" unless it is used as a child care or health care facility.

"Public Place" means any enclosed indoor area or vehicle used by and open to, the public regardless of whether such building or vehicle is owned in whole or in part by a private person or entities or by the City of Fort Wayne or other public entity, and regardless whether a fee is charged for admission to the place. It includes, but is not limited to: elevators, public conveyances, museums, concert halls, theaters, hallways, auditoriums, exhibition halls, indoor sports arenas, bowling centers, hospitals, nursing homes, medical, dental, or health care facilities, enclosed shopping centers, retail stores, retail service establishments, financial institutions, educational facilities, public meetings or hearings, public transportation facilities, ticket areas, public restrooms, libraries, restaurants, waiting areas, lobbies and reception areas.

"Restaurant" means any coffee shop, cafeteria, sandwich stand, private or public school cafeteria, and any other eating establishment which gives or offers for sale food to the public, guests or employees, as well as kitchens in which food is prepared on the premises for serving elsewhere, including catering facilities.

"Retail Tobacco Store" means a retail store utilized primarily for the sale of tobacco products and accessories and in which the sale of other products is merely incidental.

"Smoke or smoking" means inhaling, exhaling, burning, or carrying any lighted pipe, cigar, cigarette, weed, or any other lighted smoking material.

"Sports Arena" means sports pavilions, gymnasiums, health spas, boxing arenas, swimming pools, roller and ice rinks, bowling alleys, and other similar places where members of the general public assemble either to engage in physical exercise, participate in athletic competition, or witness sports events.

"Tavern" means an establishment which serves alcoholic beverages and:

1). has greater gross sales in alcoholic beverages than food each year; or

2). owns an alcoholic beverage permit and grosses less than one hundred thousand dollars ($100,000) from the sale of food each year.

Sec. 95-59 Application of Article to City-Owned Facilities.

All enclosed facilities owned by the City of Fort Wayne shall be subject to the provisions of this article.

Sec. 95-60 Prohibition of Smoking in Public Places and the Fort Wayne Children's Zoo.

A). Smoking shall be prohibited in all enclosed public places within the City of Fort Wayne, Indiana, including but not limited to the following places:

1). Elevators
2). Buses, taxicabs, and other means of public transit.
3). Restrooms.
4). Service lines.
5). Retail stores.
6). All areas available to the general public without express invitation or permission in all businesses and non-profit entities.
7). Restaurants.
8). Public areas of aquariums, galleries, libraries, and museums when open to the public.
9). Any facility which is primarily used for exhibiting any motion picture, stage, drama, lecture, musical recital, or other similar performance, except when smoking is part of a stage production.
10). Sports arenas and convention halls.
11). Every room, chamber, place of meeting or public assembly, including school buildings, under the control of any board, council, commission, committee, including joint committees, or agencies of the City or any political subdivision of the State during such time as a public meeting is in progress, to the extent such place is subject to the jurisdiction of the City.
12). Waiting rooms, hallways, wards and semiprivate rooms of health facilities, including but not limited to hospitals, clinics, physical therapy facilities, doctors' offices, and dentists' offices.
13). Lobbies, hallways and other common areas in apartment buildings, condominiums, retirement facilities, nursing homes, and other multiple-unit residential facilities.
14). Lobbies, hallways, and other common areas in multiple-unit commercial facilities.
15). Polling places.

B). Smoking shall be prohibited at all times in all areas of the Fort Wayne Children's Zoo.

Sec. 95-61 Regulation of Smoking in Places of Employment.

A). It shall be the responsibility of employers to provide a smokefree workplace for all employees.

B). Within 90 days of the effective date of this ordinance, each employer having an enclosed place of employment located within the city

shall adopt, implement, make known, and maintain a written smoking policy which shall contain the following requirements:

Smoking shall be prohibited in all enclosed facilities within a place of employment without exception. This includes common work areas, auditoriums, classrooms, conference and meeting rooms, private offices, elevators, hallways, medical facilities, cafeterias, employee lounges, stairs, restrooms, vehicles, and all other enclosed facilities.

C). The smoking policy shall be communicated to all employees within three (3) weeks of its adoption.

D). All employers shall supply a written copy of the smoking policy upon request to any existing or prospective employee.

E). An employer may establish a designated smoking area providing that such area:

1). Shall be completely enclosed and separated from the remainder of the building by solid walls and ceiling and a closable door. The walls shall tightly join the floor and ceiling,

2). Is not a work area, and

3). Is not an area non-smoking employees would ordinarily or necessarily occupy in the course of a day.

Sec. 95-62 **Where Smoking Not Regulated.**

A). Not withstanding any other provision of this ordinance to the contrary, the following areas shall not be subject to the smoking restrictions of this ordinance:

1). Private residences, except when used as a child care or health care facilities.

2). Retail tobacco shops.

3). Restaurant, hotel and motel conference rooms or meeting rooms, and public and private assembly rooms while these places are being used for private functions.

4). All hotel and motel guest rooms or suites.

5). Those areas of restaurants, bars, or taverns only accessible to adults 18 yrs of age and older, and which areas must be enclosed and separated from other portions of said restaurants, bars or taverns by solid walls and ceiling and a closable door. The walls shall tightly join the floor and ceiling.

B). Notwithstanding any other provision of this section, any owner, operator, manager, or other person who controls any establishment described in this section may declare a portion of, or the entire establishment, as a non-smoking establishment.

C). With the exception of private residences, the owner of any business where any portion of the building is specifically not regulated under (Sec. 95-62 of this ordinance) shall post a sign informing the public that smoking is

permitted in the entire establishment, or in a portion of the establishment. The sign shall further state that second hand smoke has been determined by the U.S.E.P.A. to be a class A carcinogen which may cause lung cancer, and that second hand smoke has been determined to cause respiratory diseases in children and adults.

D). To the extent that any sections of this ordinance conflict with any state or federal statute or regulation or with any regulation of the Fort Wayne Fire Department, this section shall not apply.

Sec. 95-63 **Posting of Signs.**

A). "No Smoking" signs or the international "No Smoking" symbol (consisting of a pictorial representation of a burning cigarette enclosed in a red circle with a red bar across it) shall be clearly, sufficiently, and conspicuously posted in every building or other place where smoking is regulated by this ordinance, by the owner, operator, manager, or other person having control of such building or other place.

B). Every restaurant shall have posted at every entrance a conspicuous sign clearly stating that smoking is prohibited subject to the exception set forth in paragraph (c) below

C). With the exception of private residences, the owner of any business where any portion of the building is specifically not regulated under (Sec. 95-62 of this ordinance) shall post a sign informing the public that smoking is permitted in the entire establishment, or in a portion of the establishment. The sign shall further state that second hand smoke has been determined by the U.S.E.P.A. to be a class A carcinogen which may cause lung cancer, and that second hand smoke has been determined to cause respiratory diseases in children and adults.

Sec. 95-64 Enforcement

A). Enforcement of this ordinance shall be implemented by the Fort Wayne-Allen County Board of Health, the Fort Wayne Fire Department, and all other City and County governmental agencies responsible for building inspections, which board and/or departments shall certify in writing that any establishment being inspected is complying with the terms of the ordinance.

B). Any citizen who desires to register a complaint under this ordinance may initiate enforcement with the Fort Wayne-Allen County Board of Health or the Fort Wayne Fire Department.

C). The Fort Wayne Fire Department or the Fort Wayne-Allen County Board of Health shall require, while an establishment is undergoing otherwise mandated inspections, a written "self-certification" from the owner, manager, operator, or other person having control of

such establishment that it has complied with all requirements of this ordinance.

D). Any owner, manager, operator, or employee of any establishment regulated by this ordinance shall inform persons violating this ordinance of the appropriate provisions thereof.

Sec. 95-64 Violations and Penalties

A). It shall be unlawful for any person who owns, manages, operates, or otherwise controls the use of any premises subject to regulation under this article to fail to comply with any of its provisions.

B). Any person who violates any provision of this ordinance shall be guilty of an infraction, punishable by:

1). A fine not to exceed one hundred dollars ($100) for a first violation.

2). A fine not to exceed two hundred dollars ($200) for a second violation of this ordinance within one (1) year.

3). A fine not to exceed five hundred dollars ($500) for each additional violation of this ordinance within one (1) year.

Sec. 95-65 Nonretaliation

No person or employer shall discharge, refuse to hire, or in any manner retaliate against any employee or applicant for employment because such employee or applicant exercises any right to a smokefree environment afforded by this ordinance.

Sec. 95-66 Public Education

The Fort Wayne-Allen County Board of Health shall engage in a continuing program to explain and clarify the purposes and requirements of this ordinance to citizens affected by it, and to guide owners, operators, and managers in their compliance with it. Such program may include publication of a brochure for affected businesses and individuals explaining the provisions of this ordinance.

Sec. 95-67 Other Applicable Laws

This ordinance shall not be interpreted or construed to permit smoking where it is otherwise restricted by other applicable laws."

Sec. 95-68 Severability

If any provision, clause, sentence, or paragraph or this ordinance or the application thereof to any person or circumstances shall be held invalid, such invalidity shall not affect the other provisions of this article which can be given effect without the invalid provision or application, and to this end the provisions of this article are declared to be severable.

AMENDMENTS TO ORDINANCE G-95-12-08

2nd WHEREAS - add the phrase "children under the age of 18 years"

4th WHEREAS - add the phrase "to protect those at special risk to secondhand smoke"

SECTION 2
Sec. 95.58 **Definitions**

G-95-12-08

"**Business** means any sole proprietorship, partnership, joint venture, corporation, or other business entity formed for profit-making purposes that is accessible to children under the age of 18 years..."

"**Place of Employment** means any enclosed aarea under the control of a public or private employer where employees are reasonably expected to frequent during the course of employment...hallways unless expressly exempted from the terms of this ordinance by Section 95-62, below..."

"**Public Place**" add the phrase "accessible to children under the age of 18 years" and "regardless of whether the building... and regardless of whether a fee..."

"**Restaurant** means any coffee shop, convenience store prepared food stand,..."

"**Sports Arena**" add the phrase "that is accessible to children under the age of 18 years"

Sec. 95-60 **Prohibition of Smoking in Public Places and the Fort Wayne Children's Zoo**

Subsection A
"Smoking shall be prohibited in all enclosed public places accessible to children under the age of 18 years within the City of Fort Wayne, Indiana, including but not limited to the following places;

- eliminate "restaurants" from the enumerated list of enclosed public places from the original ordinance

Sec. 95-61 **Regulation of Smoking Places of Employment**

Subsection B, paragraph 2
"Smoking shall be prohibited in all enclosed facilities within a place of employment subject to Section E, below.

Sec. 95-62 **Where Smoking Not Regulated**

Subsection A
5). Bars and taverns.
6). The bar area of a restaurant which shall include an area of up to ten feet from the bar. If, however, the room in which the bar is located is separated from the other rooms in the restaurant by floor to ceiling walls then the entire room shall not be subject to the terms of this ordinance notwithstanding the fact that open doorways lead from the bar room to the remainder of the restaurant.

- eliminate Subsection C from the original ordinance

Sec. 95-63 **Posting of Signs**

Subsection B
"Every workplace shall have posted..."

Sec. 95-64 **Enforcement**

Subsection A
add "the Fort Wayne Police Department"

Subsection B
add "or the Fort Wayne Police Department"

SECTION 3
"That this Ordinance shall be in full force and effect from the date of its legal publication after passage, and any and all necessary approval by the Mayor and shall continue to be in full force and effect for a period of one year upon which date the Ordinance shall expire unless the Common Council of the City of Fort Wayne takes all necessary legal action to renew its effect for whatever duration it deems appropriate.